

## **REMARKS**

This Amendment and Response amends claims 58, 61, 62, 67, and 68; cancels claims 73 and 74; and adds new claims 76 and 77. With this amendment, claims 58, 60-72, and 75-77 are now pending in the application. No fees are believed due for these amendments; however, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account 11-0855.

### **I. 35 U.S.C. § 102 Rejections**

#### **A. Claims 58, 60-66, 70, 71, 76, and 77**

Claim 58 is an independent method claim, and claim 62 is an independent device claim. Claims 60, 61, 70, and 76 depend from claim 58, while claims 63-66, 71, and 77 depend from claim 62.

Claims 58, 60-65, 70, and 71 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,418,445 to *Meyn et al.* ("*Meyn '445*") and U.S. Patent No. 5,279,517 to *Koops* ("*Koops*"). Claim 66 was rejected under 35 U.S.C. § 102(b) as being anticipated by *Koops*. Claims 73 and 74 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Meyn '445*. New claims 76 and 77 have not yet been examined.

#### **1. § 102 Rejections Based on *Koops***

Claims 58 and 62 have been amended to include the subject matter from dependent claims 73 and 74, respectively. Amended claims 58 and 62 are not anticipated by *Koops*, which the Examiner recognized in rejecting claims 73 and 74 as obvious over *Koops* in view of a secondary reference (further discussed in section II.A below). Inasmuch as dependent

claims 60, 61, 63-66, 70, 71, 76, and 77 depend from and thereby include the limitations of one of claim 58 or claim 62, such dependent claims are also not anticipated by *Koops*. Accordingly, the Examiner should withdraw the § 102(b) rejections of claims 58, 60-66, 70, and 71 as being anticipated by *Koops*.

2. § 102 Rejections Based on *Meyn* '445

Amended claims 58 and 62 are reproduced below, without markings, for the Examiner's reference:

58. A method for processing a slaughtered bird suspended by its legs comprising breaking at least one tissue connection between the stomach of the bird and belly fat situated on the inside of the belly skin prior to evisceration of the carcass of the bird, wherein the at least one tissue connection is broken at least partially by introducing separating means into the carcass of the bird through a hole in the skin and moving the separating means within the carcass in a substantially horizontal plane.

62. A device for processing a slaughtered bird suspended by its legs prior to evisceration of the bird comprising separating means configured to break tissue connections between the stomach of the bird and belly fat situated on the inside of the belly skin, wherein the separating means is adapted to move in a substantially horizontal plane.

It is well known that not every motion of a member inside a carcass of a bird accomplishes the same result. A member can be moved inside a carcass of a bird along many different trajectories, with each trajectory of movement having a different effect on the tissue inside the carcass. The mere fact that *Meyn* '445 describes movements of members inside the carcass of a bird does not therefore mean that *Meyn* '445 anticipates the method and device recited in claims 58 and 62 respectively.

Claims 58 and 62 recite a very specific trajectory of moving a member inside the carcass of a bird, with a very specific result. The features of the separating means and the

trajectory along which the separating means moves are simply not taught by *Meyn* '445. Furthermore, there is absolutely nothing in either the specification or drawings of *Meyn* '445 supporting the assertion that *Meyn* '445 teaches breaking tissue connections between the stomach of the bird and belly fat situated on the inside of the belly skin, as recited by claims 58 and 62.

*Meyn* '445 does not disclose whether the belly fat moves outwardly away from the entrails together with the skin, or whether the belly fat stays attached to the entrails when the skin is moved outwardly away from the entrails. *Meyn* '445 also does not disclose the presence of tissue connections between the stomach and the belly fat inside a bird. *Meyn* '445 discloses stretching belly skin outwardly away from the entrails and towards a stationary knife for performing a transverse incision in the belly skin. This is a very different processing operation than the processing operation disclosed in the present application.

The invention recited in claims 58 and 62 is an improvement over *Meyn* '445 because the weight yield of the carcass is significantly increased by causing the belly fat to remain attached to the carcass. In *Meyn* '445, the weight yield of the carcass remains lower than possible, thereby not using the full potential of the bird. This is a problem that is not addressed by *Meyn* '445, and *Meyn* '445 does not disclose any technical features capable of solving this problem.

For the above reasons, the Examiner should withdraw all rejections of claims 58 and 62, and claims 58 and 62 should be allowed. Inasmuch as claims 60, 61, 70, and 76 depend from and thereby include the limitations of claim 58, claims 60, 61, 70, and 76 should also be allowed, for at least such dependencies. Inasmuch as claims 63-66, 71, and 77 depend from

and thereby include the limitations of claim 62, claims 63-66, 71, and 76 should also be allowed, for at least such dependencies.

3. New Claims 76 and 77

As noted above, Claims 76 and 77 ultimately depend from allowable claims 58 and 62, respectively, and are therefore allowable at least by virtue of their dependencies from claims 58 and 62. Claims 76 and 77 are supported by the specification and drawings of the present application. *See* Application, p. 7, lines 8-17; p. 15, line 35 – p. 16, line 4; p. 4, line 20 – p.5, line 2; Figs. 3a, 4a, and 5a. The separating means is configured to be positionable or may be positioned in a desired or selected position relative to the breastbone in order to select the portion of fat which stays on the carcass, and the portion of fat which remains attached to the viscera.

B. Claims 67-69, 72, and 75

Claim 67 is an independent method claim, and claim 68 is an independent device claim. Claim 75 depends from claim 67, while claims 69 and 72 depend from claim 68. Claims 67-69, 72, and 75 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,186,679 to *Meyn et al.* (“*Meyn '679*”). Claims 67 and 68 have been amended to more clearly recite features of the protection element. *Meyn '679* fails to teach or suggest a protection element that protects the viscera as the elongated element is moved within the carcass of the bird, as recited by amended claims 67 and 68.

Additionally, item 30 in *Meyn '679* is not a protection element, but rather a hinge lip. *See* col. 5, line 29; col. 7, line 14. A stop function for hinge lip 30 is simply not disclosed,

and the only function disclosed for hinge lip 30 is a hinge function. Neither hinge lip 30 nor any other element in *Meyn* '679 push the viscera of the bird away from the hole in the skin. Furthermore, the following disclosure of *Meyn* '679 indicates that hinge lip 30 (which interconnects C-shaped braces 28 and 29 at their lower ends) is moved past the viscera without any significant movement of the viscera: (a) "the eviscerating means... can be moved along the entrails... without causing damage thereto" (col. 2, lines 21-25); and (b) "the eviscerating means can pass the liver without causing damage thereto" (col. 7, lines 1-2).

For the above reasons, claims 67 and 68 are not anticipated by *Meyn* '679. the Examiner should withdraw the § 102(b) rejections of claims 67 and 68. Inasmuch as dependent claims 69, 72, and 75 depend from and thereby include the limitations of one of claim 67 or claim 68, such dependent claims are also not anticipated by *Meyn* '679. Accordingly, the Examiner should withdraw the § 102(b) rejections of claims 67-69, 72, and 75.

## **II. 35 U.S.C. § 103 Rejections**

### **A. Claims 58 and 62**

Claims 73 and 74 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Koops* in view of U.S. Patent No. 6,190,250 to *Volk et al.* ("Volk"). As noted above, claims 73 and 74 have been cancelled, and claims 58 and 62 have been amended to include the subject matter of cancelled claims 73 and 74, respectively. Accordingly, Applicant expects that the Examiner would reject amended claims 58 and 62 based on the same reasoning as used in the § 103 rejection of cancelled claims 73 and 74.

However, the present application claims an earliest priority date of September 29, 1997, which predates the date on which *Volk* is available as a reference under §§ 102 and 103. Thus, a rejection of amended claims 58 and 62 under § 103 as obvious over *Koops* in view of *Volk* would not be proper. For this reason, claims 58 and 62 should be allowed. Additionally, the reasoning in section I.A.2 above with respect to distinguishing the invention recited in claims 58 and 62 from *Meyn '445* would apply similarly in distinguishing the invention recited in claims 58 and 62 from *Koops*.

B. Claim 66

Claim 66 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Meyn '445* in view of U.S. Patent No. 4,059,868 to *Meyn et al.* ("*Meyn '868*"). As noted above, claim 66 ultimately depends from allowable claim 62 and is therefore allowable at least by virtue of its dependency from claim 62.

C. Claims 67-69, 72, and 75

Claims 67-69, 72, and 75 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Meyn '445* in view of *Meyn '679*. As noted above, claims 67 and 68 have been amended to more clearly recite features of the protection element. *Meyn '445* fails to teach or suggest a protection element that protects the viscera as the elongated element is moved within the carcass of the bird, as recited by amended claims 67 and 68. Additionally, as discussed above, *Meyn '679* does not disclose a protection element or any element that pushes the viscera away from the hole in the skin. Thus, even the combination of *Meyn '445*

and *Meyn* '679 fails to teach or suggest each and every limitation recited by claims 67 and 68.

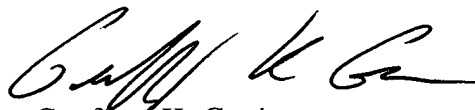
For the above reasons, including the reasons discussed in section I.B, all rejections of claims 67 and 68 should be withdrawn, and claims 67 and 68 should be allowed. Inasmuch as claim 75 depends from and thereby include the limitations of claim 67, claim 75 should also be allowed, for at least such dependency. Inasmuch as claims 69 and 72 depend from and thereby include the limitations of claim 68, claims 69 and 72 should also be allowed, for at least such dependencies.

**CONCLUSION**

The foregoing is submitted as a full and complete response to the Office Action mailed June 23, 2003. Assignee submits that claims 58, 60-72, and 75-77 are allowable for at least the reasons set forth above, and allowance of these claims is respectfully requested.

If the Examiner believes there are any issues that can be resolved via a telephone conference, or there are any informalities that can be corrected by an Examiner's amendment, please call Geoffrey Gavin at (404) 815-6046.

Respectfully submitted,



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